



SENT VIA E-MAIL/FIRST-CLASS MAIL

April 13, 2012

Delta Stewardship Council
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Terry.Macaulay@deltacouncil.ca.gov

Re: Recirculation of the Draft Environmental Impact Report

Dear Councilmembers:

The San Joaquin Tributaries Authority ("SJTA") is concerned about the Draft Environmental Impact Report's ("DEIR") compliance with the California Environmental Quality Act ("CEQA") as it pertains to the fifth draft of the Delta Plan ("Plan") and the release of the sixth draft of the Delta Plan. At the March 29, 2012 Delta Stewardship Council ("DSC") meeting, the DSC's CEQA counsel suggested that full recirculation of the DEIR may be avoided by treating the sixth draft Plan as a new alternative. This is not correct.

California Code of Regulations section 15088.5 states that recirculation is required when there is additional "significant new information" that the public has not had an opportunity to meaningfully comment on. This includes when new significant environmental impacts would result from the modified project and when an original "draft EIR [is] so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (Cal. Code of Regs., title 14, § 15088.5(a)(1) – (4).)

The DSC and its staff have been clear that its sixth draft Plan has fundamentally changed the contents of the fifth draft. This fundamental change to the proposed project requires that the DSC recirculate the DEIR due to the new impacts that the public has yet to meaningfully comment upon. In other words, the sixth draft of the Plan is not an alternative to the fifth draft of the Plan by which only a portion of the DEIR is necessary to recirculate. Couching it in such a way to avoid the CEQA requirements of adequate analysis and recirculation threatens the legitimacy of certification of the DEIR.

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The SJTA urges the DSC to keep these CEQA principles in mind when deciding whether to partially or wholly recirculate the DEIR, or to certify it.

Very truly yours,

O'LAUGHLIN & PARIS LLP



TIM O'LAUGHLIN

TO/tb

cc: San Joaquin Tributaries Authority